

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA

Clarence T. Fox, Jr.,)	Civil Action No.: 8:12-421-MGL
)	
Plaintiff,)	
)	
vs.)	
)	
Warden Darlene Drew, Carl Dozier, Luis)	ORDER AND OPINION
Berrios, Linda McDannold, and Dawn)	
Allender,)	
)	
Defendants.)	
)	
_____)	

Plaintiff Clarence T. Fox, Jr. (“Plaintiff”), a federal prisoner proceeding *pro se*, filed this civil rights action pursuant to 42 U.S.C. § 1983 alleging that Warden Darlene Drew, Carl Dozier, Luis Berrios, Linda McDannold, and Dawn Allender (“Defendants”) were deliberately indifferent to his serious medical needs in that he was denied treatment and prevented from purchasing his own boots with a moderate arch support as directed by an orthopedist and a podiatrist. (ECF No. 1).

In accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 D.S.C., this matter was referred to United States Magistrate Judge Jacquelyn D. Austin for pretrial handling. On December 5, 2012, Magistrate Judge Austin issued a Report and Recommendation recommending that Defendants’ Motion to Dismiss or, in the alternative, for Summary Judgment (ECF No. 45) be found as moot as the motion concerns defects in the originally filed complaint, but Plaintiff subsequently filed an amended complaint (ECF No. 76), and a second amended complaint (ECF No. 92) without opposition from Defendants. (ECF No. 105). Defendants have also filed a Motion to Dismiss Amended and Second Amended Complaint, or in the Alternative, Motion for Summary Judgment (ECF No. 90), which is still pending before the Court.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *See Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). The Court may accept, reject, or modify, in whole or in part, the Report and Recommendation or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). The Court is charged with making a *de novo* determination of any portion of the Report and Recommendation of the Magistrate Judge to which a specific objection is made. Plaintiff and Defendants were advised of their right to file objections to the Report and Recommendation, however the parties have not done so. (ECF No. 105-1.) In the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

After a careful review of the record, the applicable law, and the Report and Recommendation, the court finds the Magistrate Judge’s recommendation to be proper. Accordingly the Report and Recommendation is incorporated herein by reference and Defendants’ Motion to Dismiss or, in the Alternative, for Summary Judgment (ECF No. 45) is DENIED as MOOT. This action is recommitted to the Magistrate Judge for further pretrial handling.

IT IS SO ORDERED.

s/Mary G. Lewis
United States District Judge

Spartanburg, South Carolina
January 15, 2013